

**COMMONWEALTH OF PENNSYLVANIA  
STATE CHARTER SCHOOL APPEAL BOARD**

<b>Graystone Academy Charter School,</b>	:	
<b>Petitioner</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. CAB 2012-01</b>
	:	
<b>Coatesville Area School District</b>	:	
<b>Respondent</b>	:	

**OPINION**

In accordance with the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. § 17-1701-A *et seq.* (“CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on the appeal by Graystone Academy Charter School (“Graystone” or “School”) from the November 22, 2011 Order by the Coatesville Area School District Directors (“School District”) which revoked Graystone’s charter.

Graystone filed an appeal to CAB by Letter-Brief dated January 20, 2012. After considering a Motion to Quash by the School District and Graystone’s response to it, and a Motion to Dismiss by the School District and Graystone’s response to it, CAB by Order dated June 18, 2012, ultimately denied the Motion to Dismiss and dismissed the Motion to Quash, allowing Graystone’s appeal to go forward. By letter dated June 18, 2012, CAB delegated the matter to a hearing officer to address procedural issues, prepare the case for argument to CAB, and certify the record to the Board.

After consideration of motions made by both parties to supplement the record, the hearing officer permitted the supplementation of the record with PSSA and AYP results from the 2010 – 2011 and 2011 – 2012 school years, but denied supplementation with any of the other information. The parties then filed briefs in support of their respective positions on appeal. For the reasons set for below, CAB holds that the revocation of Graystone’s charter was proper.

## FINDINGS OF FACT

### *I. Procedural history*

1. On or about March 22, 2000, Graystone submitted its charter school application to the School District. R002699 – R002925; R003218.
2. The School District originally granted a three-year charter to Graystone for grades K through 8 by Decision and Order dated July 27, 2000 (“Decision”). R004591 – R004592.
3. On October 25, 2000, the School District voted to extend Graystone’s charter to a five-year charter. R000003.
4. In 2006, Graystone requested the renewal of its charter. R001088.
5. At its meeting of September 26, 2006, the School District approved the renewal of Graystone’s charter for another five years, beginning July 1, 2007. R001103 – 1104; R001873 – 001874; R001875; R004593; R004609.
6. In August 2010, Graystone’s then-principal sent a letter to the School District, stating that Graystone’s charter would expire in 2011, and sought the renewal of its charter for a five-year period. R001136 – 001137; R001872 – 001873; R003511.
7. After receiving Graystone’s letter, the School District initiated a comprehensive five-year review (“comprehensive review”) of Graystone which is required by statute. R001135 – 001137; R0001784 – 0001785; R002141; 24 P.S. § 17-1728-A(a).
8. Sometime after sending the letter seeking the renewal of Graystone’s charter, Graystone discovered that its charter would not expire until June 2012. R001872 – 001873.
9. The School District issued a letter, dated March 1, 2011, notifying Graystone of the School District’s intent not to renew Graystone’s charter and setting forth numerous grounds on which the proposed nonrenewal was based. R004634 – 004636.

10. By letter dated March 16, 2011, Graystone's solicitor withdrew Graystone's request to renew its charter and indicated that it would petition the School District for renewal in accordance with the CSL. R004677.

11. By a Notice of Revocation of Charter dated March 16, 2011, the School District provided Graystone with formal notice, pursuant to the CSL at 24 P.S. § 17-1729-A, of its intention to revoke Graystone's charter, the grounds for the proposed revocation, and the date, time and place at which public hearings concerning the revocation would be held. R003512 – 003514.

12. The Notice of Revocation set forth five categories of grounds, each divided into a number of subparts, on which the School District intended to base the revocation of Graystone's charter, as follows:

- (1) Material violations of charter:
  - a. Failure to adhere to and use the Paragon® Curriculum.
  - b. Failure to achieve the benchmark that 85% of Graystone students will achieve grade level proficiency if they attend Graystone for 5 years.
  - c. Failure to have a 3 to 1 student/computer ratio.
  - d. Failure to establish a multi-media library consistent with what is described in the Charter.
  - e. Failure to have a 200-day school year.
  - f. Failure to provide Spanish instruction as described in the Charter.
  - g. Failure to use the Iowa Assessment.
  - h. Failure to provide professional development for teachers as described in the Charter.
  - i. Failure to provide periodic parent seminars.
  - j. Failure to do parental surveys.
  - k. Failure to have a functional before/after school program.
  - l. Failure to use the New Century Computer program.
  - m. Failure to assign teachers to the same students for 3 years ("looping").
  - n. Failure to provide performance pay incentives for teachers.

(2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5) and has failed to meet performance standards set forth in the written charter:

- a. Failure to achieve the benchmark of 85% grade level proficiency for students attending Graystone for 5 years.
- b. Graystone student performance has declined and is well below that of the Coatesville Area School District.

(3) Failure to meet generally accepted standards of fiscal management or audit requirements:

- a. Consistent failure to provide the District with accurate enrollment data.
- b. Failure to collateralize bank deposits in excess of FDIC insurance.
- c. Failure to obtain timely financial audits.
- d. Failure to address the financial audit findings.

(4) Violations of provisions of Article XVII-A:

- a. Failure to provide the District with Annual Reports in a manner consistent with the Charter School Law.
- b. Failure to provide the District with ongoing access to Graystone records and facility.

(5) Violations of law from which the charter school has not been exempted:

- a. Failure to establish or follow a pre-referral process for special education students.
- b. Failure to obtain the required Act 34 clearances for all individuals coming in direct contact with students.
- c. Violations by staff and representatives of State and Federal discrimination laws by creating a hostile work environment, and by discriminating against employees on the basis of race, sex and age.
- d. Failure of Graystone Board of Trustees members to file statements of financial interest as required by the State Ethics Act, 65 Pa. C.S. § 1101 *et seq.*

*Id.*

13. On April 19, 2011, the Board of Directors of the School District voted to consider whether Graystone's charter should be revoked pursuant to the CSL and to retroactively approve the issuance of the Notice of Revocation. R000047; R000050 – 000051.

14. Additionally, on April 19, 2011, the Board of Directors of the School District appointed James E. Prendergast, Esquire, as Hearing Officer in the revocation proceedings against Graystone. R000047 – 000048; R000051 – 000052.

15. Mr. Prendergast then presided over thirteen days of hearings in the matter, between April 19, 2011 and August 25, 2011. R000052 – R002697.

16. The School District permitted a 30-day period, beginning August 25, 2011, for public comment regarding the proposed revocation of Graystone's charter. R002687 – R002689.

17. At its meeting on November 22, 2011, after reviewing any written public comments that were provided regarding the Graystone charter revocation proceedings, after hearing the oral comments made at the October 25, 2011 meeting, after reviewing the entire record in the case, and after reviewing Mr. Prendergast's proposed findings of fact and conclusions of law, the Board of Directors of the School District voted to accept Mr. Prendergast's findings of fact and conclusions of law, voted to revoke Graystone's charter, effective immediately, and issued an Order, dated November 22, 2011 ("Revocation Order"). R000001; R004723; R004725.

## ***II. The Revocation Order***

18. The School District's Revocation Order did not address or make findings as to certain grounds stated in the Notice of Revocation. R00002 – 000042.

19. The School District's Revocation Order contained several stated grounds for revocation which were not set forth in the Notice of Revocation. R000012 – 000014, paragraphs

76 – 90; R00019 – 000020, paragraphs 121 – 123; R000039, paragraph 18; R000021, paragraphs 133 – 134; R000039, paragraph 21; R000023, paragraphs 144 – 145; R000039, paragraph 25; R000028, paragraphs 173 – 174; R000041, paragraph 37.

**A. MATERIAL VIOLATIONS OF CHARTER**

**i. Failure to adhere to and use the Paragon® Curriculum.**

20. The Paragon® Curriculum is a trademarked or copyrighted curriculum developed by Mosaica Education, an educational management organization, and implemented in Mosaica schools. R000072; R001380 – 001381; R003418.

21. Graystone stated in its charter application that its curriculum would be the “innovative Paragon® Curriculum,” pursuant to which the school day is divided into two essential components: (1) a morning session focusing on the ‘core subjects’ (i.e. phonics, math, and writing), and (2) an afternoon session focusing on the Paragon® Curriculum.” R002701 – 002702; R002704 – 002717.

22. Graystone promoted the Paragon® Curriculum to students, parents, and the community in pamphlets, citing it as what would make the School unique; Graystone hosted a “Paragon® Night” on an annual basis, where the curriculum was on display for parents and community members; and Graystone referred to the Paragon® Curriculum in its Annual Reports as Graystone’s “signature curriculum.” R001101; R001119; R004315; R004364; R004381 – 004381A.

23. Graystone implemented the Paragon® Curriculum when it first began operating, in the fall of the 2002 – 2003 school year, and continued to use the curriculum through the 2005 – 2006 school year. R001095 – 001096; R001724 – 001725; R002114; R004296; R004297; R004300; R004301; R004315; R004316; R004319.

24. The manner in which the Paragon® Curriculum was written into Graystone's charter, and the fact that Graystone had actually implemented it and made it the center for the framework and development of Graystone's charter were key considerations in the recommendation of the School District's administration that Graystone's charter be renewed in connection with the School District's comprehensive review in 2006. R001105.

25. Graystone stopped using the Paragon® Curriculum at the end of 2005 – 2006 school year, but continued to promote the Paragon® Curriculum as its “signature curriculum,” in Graystone's Charter Annual Report, filed with PDE, dated October 9, 2007. R001155 – 001156; R001522; R002114; R004363; R004364.

26. The education and curriculum committee of Graystone's Board of Trustees reported at the Graystone Board's May 15, 2007 meeting that a new curriculum was being ordered, and the Graystone Board approved motions at that meeting to purchase Math and Social Studies/History curriculum programs. R001178 – 001179; R004329.

27. The Paragon® Curriculum was not used after the 2005-2006 school year, rather Graystone's curriculum was piece-meal, in that it was not standardized across the school, and teachers were permitted to use portions of different curricula to teach. R000058; R000061; R000071.

28. Graystone never sought approval from the School District to amend Graystone's charter in order to change its curriculum from the Paragon® Curriculum to something else, nor is Graystone's current curriculum the Paragon® Curriculum. R000065 – 000066; R001158 – 001159; R002104; R003615 – 004282.

**ii. Failure to establish a multi-media library consistent with what is described in the Charter.**

29. Graystone's charter application stated that the "Charter School library will be styled as a Media and Resource Center, supplying a library of excellent books and CD-ROMs;" that library holdings will contain books prescribed by the Core Knowledge Foundation and that support the content-rich Paragon® Curriculum; TVs and VCRs; and overhead and slide projectors for pedagogy; and that the Multimedia Center will also feature a Multimedia Arts and Sciences Studio for student radio and video portfolio productions. R002708.

30. During the School District's comprehensive review, the School District asked Graystone to see the library, but they were only shown a room, described as a library, which turned out to be the office of the reading specialist who holds a library certificate. R001134; R0001166 – 001167.

31. Graystone has no library consistent with what was described in its charter. R000077 – 000078; R000991; R002117 – 002118.

**iii. Failure to have a 200-day school year.**

32. Graystone's charter school application stated that the charter school "will operate on a school calendar of 200 student days, and 10 additional professional development days for teachers and related staff." R002715; R000212.

33. Graystone's charter application touted the longer school year, pointing out that the "school day and academic calendar will be extended, resulting in 3.5 additional years of instruction (over 25% more) over the K-12 sequence," and used the promise of the increase of the school year by twenty days as an illustrative feature highlighting Graystone's program, which it stated would produce a "significantly positive impact." R002702; R002704; R002726.



34. While Graystone operated on a 200-day school year for the 2003 – 2004, 2004 – 2005, and 2005 – 2006 school years, its 2007 – 2008 school year comprised 199 actual student days; its 2008 – 2009 school year comprised 178 actual student days; its 2009 – 2010 school year comprised 175 actual student days; and its 2010 – 2011 school year comprised 178 actual student days. R000214 – 215; R000216 – R000218; R001610 – 001611; R002106 – 002107; R003063 – 003064; R003065; R003066 – 003067; R003068 – 003070.

35. The reduction in the length of the school year came about not because Graystone’s students or parents requested a shorter school year, but because Graystone’s teachers complained and wanted to work fewer days. R000991 – R000993.

36. In 2008, Graystone advised the School District that Graystone intended to reduce the number of instructional days it provides to students from 200 to 181, and that Graystone would do so “[s]ubject to the approval of the Coatesville Area School District.” R000991 – 000992, R004590.

37. From December 2003 to November 2009, the School District never voted on any proposed amendments to Graystone’s charter which would have changed the number of instructional days promised in its charter application, so the School District never approved Graystone’s request to amend its charter by reducing the number of instructional days or deviating from the 200-day school year promised in Graystone’s charter. R000208; R000220 – 000221; R000993.

**iv. Failure to provide Spanish instruction as described in the Charter.**

38. Graystone’s charter school application stated that the “Charter School program will treat foreign language as an integral part of the core curriculum, providing all instruction in the target language to simulate an environment of immersion. Spanish instruction will commence

in kindergarten and build purposefully toward proficiency with each successive grade level.”  
R001149 – 001151; R002709; R002770.

39. Rather than the program described in its charter school application, Graystone currently offers Spanish language instruction to all students, grades K through 8, once every four days for about 45 minutes. R001150; R001742.

40. Graystone does not have a Spanish language instruction program as described in its charter. R001149 – 001151; R001742; R002120; R002121; R002709; R002770.

41. There is no evidence in the record indicating that Graystone sought approval from the School District to amend its charter so that it could modify the language instruction program promised in its charter school application. Record, *passim*.

**v. Failure to use the Iowa Assessment.**

42. Graystone’s charter school application stated that the School will administer the Iowa Test of Basic Skills (or other nationally-recognized assessment test) to all new students within 30 days of the beginning of the school year to establish a “base-line measurement” and then again within 30 days of the end of the school year to establish an “end-of-year measurement.” R002702.

43. Graystone does not administer the Iowa Assessment. R001161 – 001162.

44. There is no evidence in the record indicating that Graystone sought approval from the School District to amend its charter so that it could drop the Iowa Assessment or substitute a different instrument which would serve the same function. Record, *passim*.

**vi. Failure to provide periodic parent seminars and failure to do parental surveys.**

45. Graystone’s charter school application stated that the “school will provide seminars to educate parents in the academic content that their children experience, will offer

evening seminars for the community – parents, students, staff, and interested citizens – to experience what students learn, especially through the Paragon® Curriculum, and create a model to emphasize open communications between parents, staff, and students.” R002723.

46. Graystone’s charter school application also stated that parents would be informed of students’ progress through, among other things, annual parent satisfaction surveys. R002718; R002723.

47. With regard to parent satisfaction surveys, while Mr. Van Vooren was Graystone’s principal and acting CEO, Graystone once gave parents the option of going to the School’s website to fill something out electronically, but other than that, surveys were not administered to parents. R002123.

48. Graystone does not provide periodic parent seminars or conduct annual parental surveys. R000058; R000093; R001151 – 001152; R001153; R002123

49. There is no evidence in the record indicating that Graystone sought approval from the School District to amend its charter so that it could drop the promised periodic parent seminars and annual parental surveys. Record, *passim*.

**vii. Failure to use the New Century computer program.**

50. Graystone’s charter school application stated that Graystone would use the New Century computer tutorial program, which would provide parents, teachers and students with instantaneous information on a student’s performance in basic skills and suggest instructional activities to overcome deficiencies in performance. R002702.

51. Graystone’s charter school application also stated that the “exemplary diagnostic and prescriptive software from New Century” would enable custom tailoring of curricular materials to students’ individual needs and promote proficiency in areas of weakness. R002719.

52. The New Century software is not in use at Graystone. R001161, R001965 – 001966.

53. There is no evidence in the record indicating that Graystone sought approval from the School District to amend its charter by dropping the New Century computer program or replacing it with alternatives. Record, *passim*.

**viii. Failure to assign teachers to the same students for three years (“looping”).**

54. Graystone’s charter school application stated that “[i]nstead of having a different teacher every year, students in Graystone Academy will progress through grades K-2 and 3-5 with the same teacher, a practice referred to as primary care teaching. Primary care teaching provides advantages for children, including a personalized student-teacher relationship, longitudinal teacher accountability for student achievement, and open communications between parents and teachers.” R002718.

55. The practice of primary care teaching is also referred to as “looping,” because teachers follow their students from grade to grade. R000085.

56. At Graystone, for the most part, teachers stayed in the grades that they had been teaching in previous years, and while there were three classes which evolved into multiple grade levels in one class, the teachers did not “loop,” or follow their students from grade to grade; the students moved, but the teachers stayed at the same grade level. R000085 – 000086; R001164 – 001165.

57. There is no evidence in the record indicating that Graystone sought approval from the School District to amend its charter by using something other than primary care teaching/looping. Record, *passim*.

**ix. Failure to provide performance pay incentives for teachers.**

58. Graystone's charter school application and informational pamphlet stated that Graystone's faculty will subscribe to a "performance pay plan," by which compensation is linked to student performance. R002718; R004381.

59. Graystone did not implement a performance pay plan for its teachers, and does not link teacher pay to student performance. R000091 – 000092; R001154 – 001155; R002123.

**B. FAILURE TO MEET THE REQUIREMENTS FOR STUDENT PERFORMANCE SET FORTH IN PDE'S REGULATIONS OR IN THE SCHOOL'S WRITTEN CHARTER**

**i. Failure to achieve the benchmark of 85% grade level proficiency for students attending Graystone for 5 years.**

**ii. Graystone student performance has declined and is well below that of the Coatesville Area School District.**

60. Graystone stated in its charter school application that its objectives included higher standardized test scores and steady improvement in the quality of performance-based assessments; that academic achievement would increase for all students in the areas of math, science, reading and social studies; and that its goal was that 85% of students who attend Graystone for five years will achieve grade-level proficiency as measured by the state assessments in math, science, reading, and social studies. R000680; R002702.

61. With regard to Graystone's PSSA proficiency levels in Math, its students in grades 3 – 8 tested as follows:

a. In 2006 (the 2005 – 2006 school year), the AYP threshold was 45%, but only 31.5% of Graystone's students scored proficient or better, so Graystone did not make AYP. R000706; R003537; R003543.

b. In 2007 (the 2006 – 2007 school year), the AYP threshold was 45%, and 55.5% of Graystone’s students scored proficient or better, so Graystone made AYP. *Id.*

c. In 2008 (the 2007 – 2008 school year), the AYP threshold was 56%, but only 52.6% of Graystone’s students scored proficient or better, so Graystone did not make AYP. R003537; R003543.

d. In 2009 (the 2008 – 2009 school year), the AYP threshold was 56%, but 49.8% of Graystone’s students scored proficient or better, so Graystone did not make AYP. R000706 – 000707; R003537; R003543.

e. In 2010 (the 2009 – 2010 school year), the AYP threshold was 56%, but 44.6% of Graystone’s students scored proficient or better, so Graystone did not make AYP. R000707; R003537; R003543.

f. In 2011 (the 2010 – 2011 school year), the AYP threshold was 67%, but 55.3% of Graystone’s students scored proficient or better, so Graystone did not make AYP. R0003537; Supplemental Exhibit 1, Tabs 1 and 2.

g. In 2012 (the 2011 – 2012 school year), the AYP threshold was 78%, but 54% of Graystone’s students scored proficient or better, so Graystone did not make AYP. R003537; Supplemental Exhibit 1, Tabs 3 and 4.

62. With regard to Math, Graystone failed to make AYP in the past five consecutive school years, 2007 – 2008, 2008 – 2009, 2009 – 2010, 2010 – 2011, and 2011 – 2012; Graystone has only made AYP in Math once since the 2005 – 2006 school year, in school year 2006 – 2007. R000706 – 000707; R003537; R003543; Supplemental Exhibit 1, Tabs 1 through 4.

63. Pertaining to Graystone's PSSA proficiency levels in Reading, its students in grades 3 – 8 tested as follows:

a. In 2006 (the 2005 – 2006 school year), the AYP threshold was 54%, but 33.8% of Graystone's students scored proficient or better, so Graystone did not made AYP. R000708 – 000709; R003536; R003544.

b. In 2007 (the 2006 – 2007 school year), the AYP threshold was 54%, and 58.6% of Graystone's students scored proficient or better, so Graystone made AYP. R000709; R003536; R003544.

c. In 2008 (the 2007 – 2008 school year), the AYP threshold was 63%, but 54.5% of Graystone's students scored proficient or better, so Graystone did not make AYP. *Id.*

d. In 2009 (the 2008 – 2009 school year), the AYP threshold was 63%, but 43.3% of Graystone's students scored proficient or better, so Graystone did not make AYP. *Id.*

e. In 2010 ( the 2009 – 2010 school year), the AYP threshold was 63%, but 41.6% of Graystone's students scored proficient or better, so Graystone did not make AYP. *Id.*

f. In 2011 (the 2010 – 2011 school year), the AYP threshold was 72%, but 43% of Graystone's students scored proficient or better, so Graystone did not make AYP. R0003536; Supplemental Exhibit 1, Tabs 1 and 2.

g. In 2012 (the 2011 – 2012 school year), the AYP threshold was 81%, but 46% of Graystone's students scored proficient or better, so Graystone did not make AYP. R003536; Supplemental Exhibit 1, Tabs 3 and 4.

64. With regard to Reading, Graystone failed to make AYP in the past five consecutive school years, 2007 – 2008, 2008 – 2009, 2009 – 2010, 2010 – 2011, and 2011 – 2012; Graystone has made AYP in Reading just once since the 2005 – 2006 school year, in school years 2006 – 2007. R000708 – 000709; R003536; R003544; Supplemental Exhibit 1, Tabs 1 through 4.

65. When Graystone failed to make AYP for the 2009 – 2010 school year, PDE placed it in Warning status. Supplemental Exhibit 1, Tab 2.

66. When Graystone failed to make AYP for 2010 – 2011 school year, PDE placed the School in School Improvement I status. Supplemental Exhibit 1, Tabs 2 and 4.

67. When Graystone failed to make AYP for the 2011 – 2012 school year, PDE placed it in School Improvement II status. Supplemental Exhibit 1, Tab 4.

68. According to the AYP figures, Graystone has continuously failed to meet the State's standards of proficiency. R000706 – 000707; R000708 – 000709; R003536; R003537; R003543; R003544; Supplemental Exhibit 1, Tabs 1 through 5.

69. Graystone has not achieved its stated goal that “85% of students who attend the Charter School for five years will achieve grade-level proficiency, as measured by the state assessments in math, science, reading, and social studies.” R000673; R000680 – 000681; R000682 – 000683; R000689 – 000691; R002702; R003532; 003533; R003534; R003535.

70. While Graystone has made minor improvements in the number of students in the proficiency or above category in Reading since 2010 (from 41.6% in 2010 to 43% in 2011 to 46% in 2012), the number in the proficiency or above category in Math has declined (from 55.3% in 2011 to 54% in 2012), and none of the proficiency levels Graystone reached in either



subject area in 2011 and 2012 comes within 15 percentage points of the State standards for those two years. R003536 – 003537; R003543 – 003544; Supplemental Exhibit 1, tabs 1 – 5.

**C. GENERALLY ACCEPTED STANDARDS OF FISCAL MANAGEMENT OR AUDIT REQUIREMENTS**

**i. Consistent failure to provide the District with accurate enrollment data.**

71. Graystone's charter school application stated that Graystone will comply with state child accounting procedures and that it "will ensure through its Student Information System that enrollment figures and attendance will be reported accurately and in accordance with Pennsylvania Public School Code." R002739.

72. Graystone provided inaccurate enrollment and attendance information because Graystone identified four students, in the roster it provided to the School District and in its monthly billings, as special education students, and billed the District for the increased per pupil allotment, during periods when the students were no longer actually classified as students with disabilities. R000229 – 000230; R000251; R001617 – 001618; R001620 – 001621; R001621 – 001622; R001622 – 001623; R003073 – 003075; R003090 – 003118; R004404 – 004409.

73. As a consequence, Graystone overbilled the School District for these students over a period of years, resulting in overpayments by the School District to Graystone of \$110,398.54. R000229 – 000230; R003074.

74. Graystone was supposed to periodically update the IEPs of special education students and it was Graystone's obligation to provide the updated information to the School District, but Graystone failed to fulfill this obligation. R000251; R000347 – 000348; R004404 – 004409.

**ii. Failure to obtain timely financial audits.**

75. Graystone's charter application stated that "[a]n annual school audit shall be conducted according to the requirements of Article 24 of the School Code of 1949. Charter School Board of trustees shall follow the requirement set forth for School Boards in this section." R002738.

76. In its charter school application, Graystone certified that it would "comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State." R002757.

77. PDE issues a Manual of Accounting and Financial Reporting for Pennsylvania Public Schools ("Manual"), which requires, among other things, that a charter school file an annual audit with PDE no later than December 31 after the fiscal year end if the charter school expends less than \$500,000 in federal funds. R002659 – 002660; R004583 – 004584; R004589.

78. Graystone did not comply with this requirement with regard to its audits for fiscal years ending June 30, 2007, June 30, 2008, June 30, 2009, and June 30, 2010. R003425; R003451; R003455; R003481; R003484; R003510; R000528; R000621; R000624; R000627 – R000628; R000629; R0001689; R001787.

79. The audits for fiscal years ending June 30, 2007, June 30, 2008, June 30, 2009 were dated May 2, 2008, October 17, 2009, and October 27, 2010, respectively. R003425; R003451; R003455; R003481; R003484; R003510.

80. The audit for the fiscal year ending June 30, 2010, had not been filed by the day of hearing in this matter which occurred on July 7, 2011. R000528; R000621; R000624; R000627 – R000628; R000629; R0001689; R001787.

81. There is no evidence in the record indicating why Graystone filed its audits late.

Record, *passim*.

### CONCLUSIONS OF LAW

1. CAB has jurisdiction in this matter. 24 P.S. § 17-1729-A(d).

2. Pursuant to the CSL at 24 P.S. § 17-1729-A(a), a school district may revoke a charter school's charter based on any of the following:

a. One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.

b. Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa.Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.

c. Failure to meet generally accepted standards of fiscal management or audit requirements.

d. Violation of provisions of the CSL.

e. Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.

f. The charter school has been convicted of fraud.

3. When entertaining appeals from a district board's decision, CAB shall give due consideration to the findings of the local board of school directors while making an independent determination as to the merits, and shall specifically articulate reasons for agreeing or disagreeing with the local school board. 24 P.S. § 17-1729-A(d); *West Chester Area School District*, 812 A.2d at 1180.

4. The School District complied with the procedural requirements of the CSL set forth at 24 P.S. § 17-1729-A(c) by providing ample notice, conducting a hearing, presenting

evidence in support of the grounds for revocation, and providing for public comment and formally adopt its decision. Findings of Fact 9-17.

5. The essential elements of due process are notice and opportunity to be heard and to defend oneself in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction over the matter, as well as an opportunity to confront and cross-examine adverse witnesses. *Lewis v. School District of Philadelphia*, 690 A.2d 814, 816 – 817 (Pa. Cmwlth. 1997); *Soja v. Pennsylvania State Police*, 455 A.2d 613, 614 (Pa. 1982).

6. In a charter school appeal case, the minimum requirements of due process demand that a litigant have, at some stage of a proceeding, a neutral fact-finder; a charter school has such a neutral fact-finder in CAB. *West Chester Area School District*, 812 A.2d at 1180 – 1181.

7. In that the School District provided Graystone with notice and opportunity to be heard and Graystone has a neutral fact-finder in CAB, Graystone has been afforded due process. Findings of Fact 9-17.

8. Once a charter is granted, the charter school is required to comply with the terms and conditions contained in the charter, as well as the school's charter application, which is incorporated into its charter by operation of law. 24 P.S. § 17-1720-A(a); *In Re: Fell Charter School*, Docket No. CAB 2007-04 at 7.

9. A charter school cannot make unilateral changes to the charter agreement because unapproved changes run counter to the primary purpose of the charter agreement, and a charter school "must be true to its charter and the representations that caused the charter to be approved in the first instance," *Fell Charter School*, at 10; *In Re: Renaissance Academy of Pittsburgh Alternative of Hope (RAPAH) Charter School*, Docket No. CAB 2007-03 at 10.

10. Charter amendments are valid and appropriate devices. *Northside Urban Pathways Charter School v. State Charter School Appeal Board*, 50 A.3d 80, 84 (Pa. Cmwlth. 2012).

11. A charter school's board of trustees possesses the authority to decide matters related to the operation of the school, but that authority is subject to the school's charter and changes to the charter are subject to the approval of the chartering school district. *West Chester Area School District*, 812 A.2d at 1185; *Mosaica Academy Charter School v. Com., Dept. of Education*, 813 A.2d 813, 818 (Pa. 2002); *Montessori Regional Charter School v. Millcreek Township School District*, 55 A.2d 196, 200 (Pa. Cmwlth. 2012); *Northside*, 50 A.3d 80; *RAPAH Charter School*, Docket No. CAB 2007-03 at 10.

12. If changes are made without amending the charter, the charter school is subject to closure under section 1729-A(a)(1) of the CSL, 24 P.S. § 17-1729-A(a)(1). *Northside*, 50 A.3d at 86.

13. Graystone committed one or more material violations of the conditions, standards or procedures contained in its charter when, without seeking approval from the School District to amend its charter, Graystone deviated from or made changes to its charter. Findings of Fact 20-59

14. Graystone failed to meet the requirements for student performance set forth in its own charter, in that the School did not achieve its stated goal that "85% of students who attend the Charter School for five years will achieve grade-level proficiency as measured by the state assessments in math, science, reading, and social studies." Findings of Fact 60-70.

15. In the aggregate, the promised items which Graystone failed to provide to its students constituted a significant part of the charter school plan, so Graystone's failure to provide

them, Graystone's failure to seek approval from the School District for amending the charter by dropping them or replacing them with alternatives, and its failure to meet the requirements for student performance set forth in its own charter, amount to multiple material violations of the conditions, standards or procedures contained in its charter, which justifies the revocation of its charter. 24 P.S. § 17-1729-A(a)(1); *In Re: Ronald H. Brown Charter School*, Docket No. CAB 2005-08 at 25; *RAPAH Charter School*, Docket No. CAB 2007-03 at 14.

16. Graystone failed to meet the requirements for student performance set forth in the regulations of PDE, in that Graystone has only made AYP in Math once in the past seven school years that began with the 2005 – 2006 school year, and has only made AYP in Reading twice in the past seven school years that began with the 2005 – 2006 school year. Findings of Fact 60-70.

17. Graystone's failure to meet the requirements for student performance set forth in PDE's regulations and its failure to meet the requirements for student performance set forth in its own charter justify the termination of its charter. 24 P.S. § 17-1729-A(a)(2); *Ronald H. Brown Charter School*, 928 A.2d at 1153; *Renaissance Charter School*, Docket No. CAB 2008 – 07 at 10.

18. Graystone failed to meet generally accepted standards of fiscal management and audit requirements through its consistent failure to provide the School District with accurate enrollment data, in the form of proper identification of the special education classification of several students, resulting in Graystone's overbilling of the School District and the School District's overpayment of over \$100,000, and through Graystone's failure to obtain timely financial audits. Findings of Fact 71-81.

19. Graystone's failure to meet generally accepted standards of fiscal management and audit requirements justifies the termination of its charter. *Renaissance Charter School*, Docket No. CAB 2008 – 07 at 8.

20. The record in this appeal supports the revocation of Graystone's charter. Conclusions of Law 1 – 19.

## DISCUSSION

### I. THRESHOLD LEGAL ISSUES

We begin by addressing several threshold legal issues which Graystone asserts. These are threshold issues because they would invalidate the School District's Order and obviate the need to look at the substance of that Order.

#### A. DUE PROCESS

In support of its argument in favor of reversal of the School District's Order, Graystone raises issues of procedural due process. Graystone first argues that the School District's unilateral appointment of a hearing officer to preside over the hearing was improper because the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, *as amended*, § 1707-A *et seq.*, 24 P.S. § 17-1701-A *et seq.* ("CSL"), does not authorize the appointment of a hearing officer and because the CSL requires that the "local board of school directors shall conduct such hearing." However, the Commonwealth Court clearly stated in *Northside* that:

Pennsylvania courts have recognized that "the rule requiring express legislative delegation is tempered by the recognition that an administrative agency is invested with the **implied authority necessary to the effectuation of its express mandates.**" *Commonwealth v. Beam*, 567 Pa. 492, 496, 788 A.2d 357, 360 (2002). Thus, although the jurisdiction and power of administrative agencies are strictly construed, appellate courts "recognize that the General Assembly has prescribed that legislative enactments are generally to be construed in such a manner as to effect their objects and promote justice . . . and, in assessing a statute, courts are directed to consider the consequences of a particular interpretation. . . ." *Id.* at 495, 788 A.2d at 359. Stated another way, "statutory construction is not an exercise to be undertaken without considerations of **practicality, precept and experience**, as ignoring such considerations may result in a forced and narrow interpretation that does not comport with legislative intent." *Id.* at 495 – 96, 788 A.2d at 359 – 60 (quoting *Department of Environmental Resources v. Butler County Mushroom Farm*, 499 Pa. 509, 516-17, 454 A.2d 1, 5 – 6 (1982)).

*Northside*, 50 A.3d at 83 (emphasis added).



The *Lewis* case addressed the analogous issue in the context of a hearing pertaining to a school employee's dismissal from employment: whether the Philadelphia School Board complied with statutory due process dictates by delegating to a hearing officer the task of conducting the hearing upon which the Philadelphia School Board subsequently based its decision. *Lewis v. School District of Philadelphia*, 690 A.2d 814, 816. In *Lewis*, applicable provisions of the Public School Code provided that

The board of school directors . . . shall after due notice, giving the reasons therefor, and after hearing if demanded, have the right at any time to remove any of its . . . employees . . . .

*Lewis*, 690 A.2d at 817 (quoting 24 P.S. § 5-514). There is no express grant of authority in that provision which would allow the Philadelphia School Board to delegate such a matter to a hearing officer. Nonetheless, the *Lewis* court determined that there was no due process violation in the Philadelphia School Board's doing so, saying:

Like many Commonwealth agencies, which serve as ultimate fact-finding tribunals, the Board of Education has broad discretion to delegate to hearing officers the task of conducting hearings. Thus, we hold that the Board fully complied with the requirements of due process by: (1) appointing a hearing officer to hold a hearing at which *Lewis* was represented by counsel and had the opportunity to cross-examine witnesses; (2) reviewing the officer's findings of facts, conclusions of law and recommendation; and (3) making an independent ruling based on the entire record.

*Lewis*, 690 A.2d at 817.

Based on *Northside* and *Lewis*, the School District had the implied authority necessary to effectuate the express mandate that it conduct a hearing, and it exercised that implied authority, and that broad discretion recognized in *Lewis*,<sup>1</sup> by delegating the matter to a hearing officer. Certainly in the face of issues of practicality (such as the protracted nature of the

---

<sup>1</sup>The School District's motion delegating the matter to Mr. Prendergast actually cited to *Lewis*. R000048.

proceeding, the probable need for multiple days of hearing, and the difficulty, if the School District had heard the matter itself, in coordinating the schedules of each of the School District members to allow them to attend), that decision was reasonable and well within the confines of due process. The fact that Graystone attended the many days of hearing, was represented by counsel, and had the opportunity to cross-examine all of the witnesses, and that the School District then reviewed the hearing officer's findings of fact and conclusions of law and made an independent ruling based on the entire record, as the Philadelphia School Board did in *Lewis*, further comported with due process as the *Lewis* court outlined it. *See also Cavanaugh v. Fayette County Zoning Hearing Board*, 700 A.2d 1353, 1356 (Pa. Cmwlth. 1997). Therefore, the School District fully complied with the requirements of due process when it delegated the revocation hearings to a hearing officer, and Graystone's argument to the contrary is rejected.

Graystone also argues, as part of its due process argument, that the School District failed to comply with the Sunshine Act, Act of October 15, 1998, P.L. 729, No. 93, *as amended*, 65 Pa. C.S. § 701 *et seq.*, in issuing the Notice of Revocation without a prior public vote.<sup>2</sup> Even if a Sunshine Act violation occurred, CAB is not the correct forum in which to raise it because CAB lacks jurisdiction of legal challenges under the Sunshine Act.<sup>3</sup> The only way for Graystone to raise a claim of a violation of the Sunshine Act by the School District is through filing a challenge in the court of common pleas. 65 Pa. C.S. § 715. Such a challenge must also be filed

---

<sup>2</sup>Graystone mentions the March 1, 2011 Notice of Nonrenewal in this argument as well, but since Graystone withdrew its request to renew its charter by letter dated March 16, 2011, R004677, and the School District then pursued the Notice of Revocation rather than the Notice of Nonrenewal, the Notice of Nonrenewal is not at issue.

<sup>3</sup> Even if the School District failed to comply with the Sunshine Act in issuing the Notice of Revocation (which CAB does not assert), the School District did vote, at a public meeting on April 19, 2011, to retroactively approve the issuance of the Notice of Revocation. R000047, R000050 – R000051. Such an action has been determined to constitute a ratification of the prior action which is acceptable, accords with the requirements of the Sunshine Act, and cures any Sunshine Act violation, thereby preventing the invalidation of the action taken. *See Thomas v. Twp. of Cherry*, 722 A.2d 1150, 1154 (Pa. Cmwlth. 1999). Therefore, any Sunshine Act violation which might have occurred was cured by the School District's April 19, 2011, vote.

in a timely fashion or the court's jurisdiction is lost. *See Day v. Civil Service Commission of the Bor. of Carlisle*, 931 A.2d 646 (Pa. 2007) (alleged violation of Sunshine Act must be timely filed or court will lose jurisdiction of the claim). Therefore, Graystone has raised this Sunshine Act question in the wrong forum, it is not an issue that CAB can decide, and this portion of Graystone's due process argument is rejected.

As part of its second due process argument, Graystone argues that section 1729-A(c) of the CSL, 24 P.S. § 17-1729-A(c), requires that the local board of school directors

provide "notice of revocation or nonrenewal of a charter" and "shall state the grounds of such action". To satisfy §1729-A(c) requires at a minimum a deliberation of the school board in public over the alleged grounds for a revocation or nonrenewal to determine if sufficient grounds have been presented.

Petitioner, Graystone Academy Charter School, Brief in Support of the Appeal of Respondent's Charter Revocation ("Graystone's Brief") at 39. While Graystone accurately quoted portions of section 1729-A(c), 24 P.S. § 17-1729-A(c), its argument that the provision requires, at a minimum, "deliberation of the school board in public over the alleged grounds for a revocation" is unsupported by the plain language in section 1729-A(c), 24 P.S. § 17-1729-A(c). Here, the Notice of Revocation clearly set forth five numbered grounds for revocation, each of which contained numerous sub-grounds, and all of which met the requirement that "[a]ny notice of revocation . . . shall state the grounds for such action with reasonable specificity." Section 1729-A(c), 24 P.S. § 17-1729-A(c). Accordingly, this part of Graystone's due process argument is also rejected.

As another part of its due process argument, Graystone maintains that the revocation proceeding constituted "litigation by ambush," Graystone's Brief at 40, in that Graystone had no notice of who the witnesses would be before they were called; no notice of the exhibits that would be introduced; and was allowed no discovery; and the appointed hearing officer had a

conflict of interest which should have disqualified him. This argument is faulty for several reasons, the first of which is that the required “notice,” which is one of the essential elements of due process discussed above, means notice which at least contains a sufficient listing and explanation of any charges so that the party involved can know against what charges it must defend. *Pisnanton v. State Board of Medicine*, 680 A.2d 911, 913 (Pa. Cmwlth. 1996), quoting *Pennsylvania Social Services Union, Local 668, SEIU v. Dep’t of Labor and Industry, Bur. of Workers’ Comp.*, 524 A.2d 1005, 1008 (Pa. Cmwlth. 1987). Certainly, the Notice of Revocation issued in this matter provided a sufficient listing and explanation of the charges against which Graystone would have to defend.

This part of Graystone’s due process argument is also faulty because what Graystone essentially complains about is the lack of discovery in the proceeding. Notice of who the witnesses would be and notice of the exhibits that would be introduced are both things that, in a civil proceeding, would be a normal part of pretrial discovery. Here, Graystone complains because no discovery was allowed. However, this proceeding is an administrative, rather than a civil proceeding, and discovery is not made available in administrative proceedings. *Weinberg v. Com., Insurance Department*, 398 A.2d 1120, 1121 (Pa. Cmwlth. 1979); see also *Pa. Bankers Ass’n v. Pa. Dep’t of Banking*, 981 A.2d 975, 997 (Pa. Cmwlth. 2009). Therefore, the lack of prior notice as to who the witnesses would be and what exhibits would be introduced, and the lack of discovery do not amount to a violation of Graystone’s due process rights.

In making this part of its due process argument, Graystone argues, as well, that the appointed hearing officer had a conflict of interest which should have disqualified him from hearing the matter. Graystone asserts in its brief that the hearing officer, Mr. Prendergast, was questioned about previous representations of the School District or potential conflicts of interest

and he neglected to disclose any. Graystone's Brief at 41 – 42. However, there is nothing in the record to support the claim that Mr. Prendergast was questioned; nor does Graystone cite any part of the record to support that claim. Review of the record indicates that, at the beginning of the first day of the hearing, Graystone's counsel objected to the appointment of the hearing officer on the basis that the CSL does not authorize it, but that was the sole basis for the objection, and no questioning of Mr. Prendergast followed. R000050.<sup>4</sup>

Nor did Graystone make a motion that Mr. Prendergast recuse himself due to a conflict of interest, despite the fact that such a motion is the longstanding, accepted, and proper practice for challenging the impartiality of a presiding officer. *Reilly v. SEPTA*, 489 A.2d 1291, 1299 (Pa. 2005),<sup>5</sup> quoting *Crawford's Estate*, 160 A. 585 (Pa. 1932). Indeed, it is the duty of the party who asserts that a judge should be disqualified to allege by petition the bias, prejudice or unfairness necessitating recusal. *Reilly*, 489 A.2d at 1299, citing *Commonwealth v. Darush*, 459 A.2d 727 (Pa. 1983) and *Commonwealth v. Perry*, 364 A.2d 312 (Pa. 1976). Additionally, the moving party in the instance of a recusal petition or motion must allege facts tending to show bias, interest or other disqualifying factors. *Com. v. King*, 839 A.2d 237, 239 (Pa. 2003), citing *Reilly*. Graystone has alleged no such facts, nor did Graystone point to anything in the record to support the conclusion that Mr. Prendergast was less than impartial during the course of the proceeding.

---

<sup>4</sup>Graystone's counsel stated as follows prior to the vote by the Board of Directors of the School District to appoint Mr. Prendergast:

It is also our position that there is no authority under the Charter School Law with regards for a hearing officer, with all do[sic] respect Mr. Prendergast [sic], we ask that the record reflect that we object that the proceedings go forward on that basis. That's all.

R000050.

<sup>5</sup>The *Reilly* case was subsequently overruled on unrelated grounds. See *Gallagher v. Harleysville Mutual Insurance Company*, 617 A.2d 790, 795 notes 1 and 2 (Pa. Super. 1992). The discussion about recusal was not overruled.

And finally, the fact that this entire matter is to be decided *de novo* by CAB cures any lack of impartiality that might have cast a cloud over Mr. Prendergast's handling of the matter.

That is because

[i]f the cause is appealed, the record is before the appellate court [or in this case, the appeal board] which can determine whether a fair and impartial trial were had. *If so, the alleged disqualifying factors of the trial judge become moot.*

*Reilly*, 489 A.2d at 1300 (emphasis in original). Indeed, the Pennsylvania Supreme Court has held in a charter school appeal case that the minimum requirements of due process demand that a litigant have, at some stage of a proceeding, a neutral fact-finder, and that a charter school has a neutral fact-finder in CAB. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 – 1181 (Pa. 2002). Accordingly, for all of the reasons above, the remainder of Graystone's due process argument is rejected as well.

## **B. INCORPORATION OF CHARTER APPLICATION INTO CHARTER**

While the School District argues that Graystone's Charter Application was incorporated into Graystone's Charter as a matter of law, Graystone argues that a charter school is bound by the terms of its charter application only when the terms of the application are "expressly incorporated" into its charter. Graystone's Brief at 11. If Graystone's argument is accepted, then the Charter granted to it by the School District in 2000 comprises a mere two pages composed of the six-paragraph Decision and a one-paragraph Order (referred to collectively herein as "Decision"). *See* R004591 – R004592. However, Graystone's argument must be rejected in the face of a reasoned application of the rules of statutory construction and prior case law.

In this case, the pertinent language from the CSL reads as follows:

### **§ 1720-A. Term and form of charter.**

(a) Upon approval of a charter application under section 1717-A, a written charter shall be developed *which shall contain the provisions of the charter*

*application. . . This written charter. . . shall act as legal authorization for the establishment of a charter school. This written charter shall be legally binding on both the local board of school directors of a school district and the charter school's board of trustees. . . .*

24 P.S. § 17-1720-A(a) (emphasis added). Graystone argues that this provision requires language in the charter that specifically or expressly incorporates the charter application into the charter, while the School District argues that this provision incorporates the charter application into the charter as a matter of law, without the need for any express or specific incorporation language in the charter. For several reasons, Graystone's argument is unpersuasive.

First of all, the use of the term "shall" in this provision must be construed as mandatory. The rules of statutory construction provide that words and phrases are to be construed according to their common and approved usage, or their "plain meaning," 1 Pa. C.S.A. § 1903(a), and the legislative intent controls the construction of a statute. 1 Pa. C.S.A. § 1921. Although the word "shall" can be interpreted as mandatory or merely directory, it is generally regarded as imperative when it is used in a statute. *In re Columbia Borough*, 354 A.2d 277, 279 (Pa. Cmwlth. 1976). Moreover, in *Shenango Valley Regional Charter School v. Hermitage School District*, 756 A.2d 1191 (Pa. Cmwlth. 2000), the Commonwealth Court concluded that the legislature's use of the word "shall" in section 1717-A(i)(8) of the CSL, 24 P.S. § 17-1717-A(i)(8), is mandatory because "the statute emphasizes that time is of the essence and directs the local school boards and the Board to quickly resolve the issue of whether to grant or deny an institutions [sic] charter school application." *Shenango Valley*, 756 A.2d at 1194.

There is no reason to find differently regarding the use of "shall" in section 1720-A(a), 24 P.S. § 17-1720-A(a). In this case, the statute provides that the written charter *shall* act as legal authorization for the establishment of a charter school and that the written charter *shall* be legally binding on both the local school district and on the charter school's board of trustees. *Id.* With

that language, the CSL assigns to the written charter a high level of importance, in that the charter is to be a binding authorization to operate. Therefore, it is consistent with the rationale of *Shenango Valley* to interpret the term “shall” to be mandatory when used in the phrase “shall contain the provisions of the charter application.”

Furthermore, the rules of statutory construction require that a statute’s language must be read in a sense which harmonizes with the subject matter and its general purpose and object. *Busy Beaver Bldg. Centers, Inc. v. Tueche*, 442 A.2d 252, 256 (Pa. Super 1981). The general purpose and object of the CSL are set forth in section 1702-A, 24 P.S. § 17-1702-A, where the General Assembly outlined its intent in enacting the CSL.<sup>6</sup> Also, in evaluating a charter school application initially, the local board of school directors is to consider criteria including, but not limited to, the criteria set forth in section 1717-A(e)(2) of the CSL, 24 P.S. § 17-1711-A(e)(2), which specifically references, among other things, “the extent to which the application. . . conforms to the legislative intent outlined in section 1702-A.” Section 1717-A(e)(2)(iii), 24 P.S. § 17-1717-A(e)(2)(iii). Given (1) that the legislature established an application process in which the charter school applicant must provide specified information to the chartering district so as to

---

<sup>6</sup>Section 1702-A, 24 P.S. § 17-1702-A, reads as follows:

**§ 17-1702-A. Legislative intent**

It is the intent of the General Assembly, in enacting this article, to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently from the existing school district structure as a method to accomplish all of the following:

- (1) Improve pupil learning.
- (2) Increase learning opportunities for all pupils.
- (3) Encourage the use of different and innovative teaching methods.
- (4) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- (5) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- (6) Hold the schools established under this act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.



assure that the proposed charter school will, among other things, fulfill the stated legislative intent of the CSL, and (2) that the charter application is the document by which the charter school applicant persuades the chartering district that the proposed charter school will further that specifically-stated legislative intent, it follows that interpreting the statute to incorporate the charter application into the charter as a matter of law harmonizes with that legislative intent.

Indeed, interpreting the CSL differently could result in an absurd implementation of the CSL in which a chartering district could approve a charter application, but because it neglects to include express incorporation language in the written charter, the charter school could immediately deviate from any of the items set forth in the charter application. The charter school could immediately fail to comply with one or more of the 17 items of information it was required to provide in order to obtain approval and could immediately begin to operate in such a way that its approval would never have been granted if it had proposed operating that way in its charter application. *See In Re: Fell Charter School*, Docket No. CAB 2007-04 at 10 (a charter school “must be true to its charter and the representations that caused the charter to be approved in the first instance”).

The rules of statutory construction do not allow such an absurd result. Even when a statute is susceptible to more than one interpretation, the consequences or practical results of a particular interpretation may be considered, *Pa. State Police v. McCabe*, 644 A.2d 1270, 1272 (Pa. Cmwlth. 1993); *Lehigh Valley Coop. Farmers v. Commonwealth*, 447 A.2d 948, 950 (Pa. 1982); *Pennsylvania State Lodge of Fraternal Order of Police v. Bailey*, 562 A.2d 985, 987 (Pa. Cmwlth. 1989), *aff'd* 579 A.2d 1295 (Pa. 1990), and the legislature cannot be assumed to have intended an absurd result. 1 Pa. C.S.A. § 1922(a); *Lehigh Valley Coop. Farmers*, 447 A.2d at 950. Here, the practical result of the interpretation urged by Graystone would clearly be absurd

because the charter school applicant could make all the right representations in its application but, upon grant of the application, be at complete liberty to pursue an entirely different course of operation, even if the manner of its operation would not accord with the requirements of the CSL. That cannot have been the legislature's intent.

Graystone argues that there is no case law on point to support the proposition that a charter school application is incorporated into the charter as a matter of law, but the record is replete with references indicating that CAB has interpreted section 1720-A(a), 24 P.S. § 17-1720-A(a), as advocated by the School District. In fact, much as has been the case with regard to charter amendments, when the issue of incorporation of the charter application has arisen in any fashion in past cases, school districts, charter schools, and the Commonwealth Court itself have acted in accordance with the assumption that the incorporation occurs by operation of law. *See Northside*, 50 A.3d at 84.

For example, CAB stated as follows in its decision *Fell Charter School*, Docket No. CAB 2007-04:

When a charter is granted by a local board of school directors, the charter school is required to comply with the terms and conditions of that charter, as well as the information contained in the charter school application, which is incorporated into the charter. 24 P.S. § 17-1720-A; *see also* 24 P.S. § 17-1729-A(a)(a).

*Fell Charter School*, Docket No. CAB 2007-04 at 7; *see also In Re: Renaissance Academy of Pittsburgh Alternative of Hope (RAPAH) Charter School*, Docket No. CAB 2007-03 at 6. The *Fell* and *RAPAH* decisions did not say “which is expressly incorporated into the charter”; they cited to the applicable provision from the CSL and simply interpreted that provision as incorporating the charter school application into the charter. Also, CAB has stated more than once that

because the information contained in the charter school application eventually becomes part of the charter itself, the information in the charter school application is intrinsic to the charter and is essentially the heart of the charter school.

*See In Re: Thurgood Marshall Academy Charter School*, Docket No. CAB 2001-5 at 11; *In Re: Renaissance Charter School*, Docket No. CAB 2008-07 at 9. The word “intrinsic” is defined as

belonging to the real nature of a thing; not dependent on external circumstances; essential; inherent. . .

WEBSTER’S NEW WORLD DICTIONARY 708 (3d Coll. Ed. 1994). The use of that word in the past indicates that section 1720-A(a), 24 P.S. § 17-1720-A(a), incorporates the charter application by operation of law into the charter; the charter application’s incorporation into the charter is not dependent on external circumstances such as express incorporation language.

In conclusion, it is consistent with the rules of statutory construction, as well as with prior decisions by CAB and by the Commonwealth Court, and with the language in the School District’s Decision itself, to interpret section 1720-A(a), 24 P.S. § 17-1720-A(a), as incorporating of Graystone’s charter application into its charter as a matter of law.

### **C. CHANGES/AMENDMENTS TO CHARTER**

Graystone argues that, even if its charter did incorporate its charter application as a matter of law, Graystone’s bylaws allow its board of trustees the authority to amend portions of its charter. The Commonwealth Court in *Northside, supra*, pointed out that, despite the fact that the CSL is silent on charter amendments, school districts, charter schools, and the Commonwealth Court itself have acted in accordance with the assumption that charter amendments are valid and appropriate devices. *Northside*, 50 A.3d at 84. CAB has previously held that a charter school cannot make unilateral changes to the charter agreement, as unapproved changes run counter to the primary purpose of the charter agreement. *RAPAH*

*Charter School*, Docket No. CAB 2007-03 at 10. Therefore, the only way to modify a charter agreement is to request an amendment to the agreement. *Id.*

And, in fact, that is consistent with interpreting section 1720-A, 24 P.S. § 17-1720-A, to require the incorporation into the charter of the charter application's terms by operation of law. To hold otherwise and allow charter schools to make changes to their charters without the approval of the chartering school district would engender the same absurd result: a chartering district could approve a charter application but upon grant of the charter, the charter school could immediately, and without consequences, deviate from any of the items set forth in the charter application which persuaded the chartering district to issue the charter in the first place. The charter school could operate in such a way that approval would never have been granted if it had proposed operating that way in its charter application. As already pointed out, that is not permissible because a charter school "must be true to its charter and the representations that caused the charter to be approved in the first instance." *Fell Charter School*, Docket No. CAB 2007-04 at 10.

Additionally, while a charter school's board of trustees unquestionably possesses the authority to decide matters related to the operation of the school, that authority is subject to the school's charter. *West Chester Area School District*, 812 A.2d at 1185; *Mosaica Academy Charter School*, 813 A.2d at 818. In review then, the chartering district grants the charter based on what is in the charter application. *Fell Charter School*, Docket No. CAB 2007-04 at 10; *RAPAH Charter School*, Docket No. CAB 2007-03 at 6. The contents of the charter application are incorporated by operation of law into the charter. *Id.* Any changes to the charter are subject to the approval of the chartering district. *Northside*, 50 A.3d 80, and *Montessori Regional*, 55

A.2d 196. And finally, the chartering school district has accountability over the charter school. *Mosaica*, 813 A.2d at 818.

It follows that the charter school's board of trustees may make changes to the charter, but any changes are subject to the approval of the chartering school district, and if changes are made without amending the charter, the charter school is subject to closure under section 1729-A(a)(1) of the CSL, 24 P.S. § 17-1729-A(a)(1). *Northside*, 50 A.3d at 86. Therefore, Graystone does not, as it argues, have unfettered authority to make changes to its operations if those changes require deviation from the charter and the charter application incorporated into the charter by operation of law.

## **II. STANDARD OF REVIEW/BURDEN OF PROOF**

Pursuant to the CSL at section 1729-A, 24 P.S. § 17-1729-A, the local board of school directors may choose to revoke or not to renew a charter for any of the following reasons:

- (1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.
- (2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.
- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of this article [Article XVII-A of the Public School Code of 1949].
- (5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (6) The charter school has been convicted of fraud.

CSL at section 1729-A(1) – (6), 24 P.S. § 17-1729-A(1) – (6).

CAB applies a *de novo* standard of review when entertaining appeals from a School District's denial of a charter school application under section 1717-A(i)(6), 24 P.S. § 17-1717-A(i)(6). *West Chester Area School District*, 812 A.2d at 1180. Since the standard of review for appeal of the nonrenewal or revocation of a charter school's charter is the same, *compare* section 1729-A(d), 24 P.S. § 17-1729-A(d), *with* section 1717-A(i)(6), 24 P.S. § 17-1717-A(i)(6), the review in this matter is also a *de novo* review. *See Thurgood Marshall Academy Charter School*, CAB Docket No. 2001-5 at 10 – 11.

With regard to the burden of proof, the degree of proof required to establish a case before an administrative tribunal is the same degree of proof used in most civil proceedings, i.e. a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). Preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery*, 70 A.2d at 856.

### **III. SCHOOL DISTRICT'S STATED GROUNDS FOR REVOCATION**

The Notice of Revocation, dated March 16, 2011, which the School District issued stating the grounds for its action with reasonable specificity, set forth five categories of grounds for revocation, each of which incorporated two or more individual grounds, as follows:

1. Material violations of charter:
  - a. Failure to adhere to and use the Paragon® Curriculum.
  - b. Failure to achieve the benchmark that 85% of Graystone students will achieve grade level proficiency if they attend Graystone for 5 years.
  - c. Failure to have a 3 to 1 student/computer ratio.
  - d. Failure to establish a multi-media library consistent with what is described in the Charter.
  - e. Failure to have a 200-day school year.

- f. Failure to provide Spanish instruction as described in the Charter.
  - g. Failure to use the Iowa Assessment.
  - h. Failure to provide professional development for teachers as described in the Charter.
  - i. Failure to provide periodic parent seminars.
  - j. Failure to do parental surveys.
  - k. Failure to have a functional before/after school program.
  - l. Failure to use the New Century Computer program.
  - m. Failure to assign teachers to the same students for 3 years (“looping”).
  - n. Failure to provide performance pay incentives for teachers.
2. Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5) and has failed to meet performance standards set forth in the written charter:
- a. Failure to achieve the benchmark of 85% grade level proficiency for students attending Graystone for 5 years.
  - b. Graystone student performance has declined and is well below that of the Coatesville Area School District.
3. Failure to meet generally accepted standards of fiscal management or audit requirements:
- a. Consistent failure to provide the District with accurate enrollment data.
  - b. Failure to collateralize bank deposits in excess of FDIC insurance.
  - c. Failure to obtain timely financial audits.
  - d. Failure to address the financial audit findings.
4. Violations of provisions of Article XVII-A<sup>7</sup>:
- a. Failure to provide the District with Annual Reports in a manner consistent with the Charter School Law.
  - b. Failure to provide the District with ongoing access to Graystone records and facility.

---

<sup>7</sup> Despite the limitations placed on the visits to Graystone and despite its failure to provide many of the documents requested, the School District’s comprehensive review team obtained sufficient information during the course of the comprehensive review to issue a notice of nonrenewal of charter to Graystone dated March 1, 2011, followed by a Notice of Revocation of Charter dated March 16, 2011, each of which set forth numerous grounds underlying the respective actions. R003512 – 003514, R004634 – 001636. Therefore, Graystone’s recalcitrance was not material, and does not justify revocation of its charter

5. Violations of law from which the charter school has not been exempted<sup>8</sup>:
- a. Failure to establish or follow a pre-referral process for special education students.
  - b. Failure to obtain the required Act 34 clearances for all individuals coming in direct contact with students.
  - c. Violations by staff and representatives of State and Federal discrimination laws by creating a hostile work environment, and by discriminating against employees on the basis of race, sex and age.
  - d. Failure of Graystone Board of Trustees members to file statements of financial interest as required by the State Ethics Act, 65 Pa. C.S. § 1101 *et seq.*

R003512 – 003514.<sup>9</sup>

**A. MATERIAL VIOLATIONS OF CHARTER**

**i. Failure to adhere to and use the Paragon® Curriculum.**

The Paragon® Curriculum is a trademarked or copyrighted curriculum developed by Mosaica Education, an educational management organization, and implemented in Mosaica schools. R000072, R001380 – 001381, R003418.

Graystone stated in its charter application that its curriculum would be the “innovative Paragon® Curriculum,” pursuant to which the school day is divided into two essential components: (1) a morning session focusing on the “core subjects” (i.e. phonics, math, and writing), and (2) an afternoon session focusing on the Paragon® Curriculum. R002701 – 002702, R002704 – 002717. Graystone promoted the Paragon® Curriculum to students, parents, and the

---

<sup>8</sup> The School District’s November 22, 2011 Order included seven Findings of Fact, at pages 35 – 36, paragraphs 225 – 231, related to this allegation, but made no conclusions of law related to those Findings of Fact. There is no support in the record for any finding that Graystone has violated a law from which it has not been exempted.

<sup>9</sup> The School District’s Revocation Order did not address or make findings as to several of the stated grounds. Additionally, the School District’s Revocation Order contained several stated grounds for revocation which were not set forth in the Notice of Revocation. Since the School District in its Revocation Order made no findings or conclusions of law as to certain grounds and proper notice was not afforded to Graystone on other grounds, they cannot serve as a basis for revocation of Graystone’s charter and were not considered by CAB.



community in pamphlets about the School as being what would make the School unique. It hosted a “Paragon® Night” on an annual basis, where the curriculum was on display for parents and community members, and referred to the Paragon® Curriculum in its Annual Reports as Graystone’s “signature curriculum.” R001101, R001119, R004315, R004364, R004381 – 004381A. Graystone and its representatives testified before the School District, at the hearing on the charter school application held on May 8, 2000, that the Paragon® Curriculum has been implemented in very different communities with the expectation that children of all circumstances could benefit from it and that it is appropriate for all communities for providing children with the best possible education. R003352.

Graystone implemented the Paragon® Curriculum when it first began operating, in the fall of the 2002 – 2003 school year, R004297, and continued to use that curriculum through the 2005 – 2006 school year. R001095 – 001096, R001724 – 001725, R002114, R004296, R004300, R004301, R004315, R004316, R004319. Moreover, the manner in which the Paragon® Curriculum was written into Graystone’s charter, and the fact that Graystone had actually implemented it and made it the center for the framework and development of Graystone’s charter, were key considerations in the recommendation of the School District’s administration that Graystone’s charter be renewed in connection with the School District’s comprehensive review in 2006. R001105.

Graystone stopped using the Paragon® Curriculum at the end of 2005 – 2006 school year. R001155 – 001156, R002114. Nonetheless, Graystone promoted the Paragon® Curriculum as its “signature curriculum,” in Graystone’s Charter Annual Report, filed with PDE, dated October 9, 2007. R001522, R004363, R004364. Additionally, the education and curriculum committee of Graystone’s Board of Trustees reported at the Graystone Board’s May 15, 2007

meeting that a new curriculum was being ordered, and the Graystone Board approved motions at that meeting to purchase Math and Social Studies/History curriculum programs. R001178 – 001179, R004329. Thereafter, Graystone’s curriculum was piece-meal, in that it was not standardized across the school, and teachers were permitted to use portions of different curriculums to teach. R000062 – 000063. Graystone never sought approval from the School District to amend Graystone’s charter in order to change its curriculum from the Paragon® Curriculum to something else. R000065 – 000066. Nor is Graystone’s current curriculum the Paragon® Curriculum. R001158 – 001159, R002104, R003615 – 004282.

CAB has previously determined that “the Paragon® Curriculum is designed to prepare students to be creative, intuitive and analytical thinkers with a solid understanding of the history of ideas.” *See Lehigh Valley Academy Regional Charter School*, Docket No. CAB 2000-12 and 13 at 11 (*citing In re: Ronald H. Brown Charter School*, Docket No. CAB 1999-1 at 21). Additionally, CAB has determined that

[t]he curriculum a charter applicant sets forth in its charter is a material provision of that charter because curriculum is obviously a very significant part of the charter school’s program. The charter is legally binding on the charter school and the chartering school district. 24 P.S. § 17-1720-A. Thus, unilaterally changing the curriculum is a material violation of the charter.

*In Re: Ronald H. Brown Charter School*, Docket No. CAB 2005 – 08 at 25, *aff’d, Ronald H. Brown Charter School v. Harrisburg City School District*, 928 A.2d 1145 (2007). And finally, CAB has ruled that a charter school’s failure to follow the curriculum identified in the charter school application without seeking amendment of the charter clearly constitutes a “material violation” under the CSL at section 1729-A(a)(1), 24 P.S. § 17-1729-A(a)(1), which is sufficient grounds to terminate the charter. *Thurgood Marshall Academy Charter School*, Docket No. CAB 2001-5 at 12. Moreover, the Commonwealth Court in *Northside*, 50 A.3d 80, made the same

determination: if a charter school changes a term of its charter without amending its charter, the school is subject to closure under the CSL at section 1729-A(a)(1), 24 P.S. § 17-1729-A(a)(1). *Northside*, 50 A3d at 86.

Graystone provided no proposed findings of fact, so it does not appear to dispute the facts set forth above, which are securely based in the record; rather, Graystone only made the legal arguments already addressed and rejected earlier. Since there are no facts in dispute and the law is not on Graystone's side, there is no basis here for making any determination other than one that is consistent with CAB's prior decisions in *Ronald H. Brown Charter School* and *Thurgood Marshall Academy Charter School* and the Commonwealth Court's opinion in *Northside*. Accordingly, the School District has met its burden of proof on this issue, demonstrating by a preponderance of the evidence that Graystone committed a material violation of its charter when it unilaterally changed its curriculum without seeking an amendment to its charter.

**ii. Failure to achieve the benchmark that 85% of Graystone students will achieve grade level proficiency if they attend Graystone for five years.**

This issue was stated twice in the Notice of Revocation with the exact same language, under two different section headings. For the discussion of the issue, see Section B(i) below, which is incorporated here by reference.

**iii. Failure to establish a multi-media library consistent with what is described in the Charter.**

Graystone's charter application stated that the "Charter School library will be styled as a Media and Resource Center, supplying a library of excellent books and CD-ROMs." R002708. Additionally, the application stated that

[t]he library holdings will contain the books prescribed by the Core Knowledge Foundation and those that support the content-rich Paragon® Curriculum, as well as TV/VCRs, overhead and slide projectors for pedagogy. The Multimedia Center will also feature a Multimedia Arts and Sciences Studio for student radio and video portfolio productions.

*Id.*

However, Graystone has no library as described in its charter. R000077 – 000078, R000991, R002117 – 002118. Indeed, when the School District’s comprehensive review team conducted its comprehensive review in 2010 in relation to the renewal of Graystone’s charter, the team attempted to visit Graystone’s library and were told they did not have one. R000852. This uncontroverted evidence indicates that Graystone does not have a multi-media library consistent with what is described in its charter. Therefore, we find that Graystone violated its charter on this issue.

**iv. Failure to have a 200-day school year.**

Graystone’s charter school application stated that the charter school “will operate on a school calendar of 200 student days, and 10 additional professional development days for teachers and related staff.” R002715; R000212. The charter application touted the longer school year, pointing out that the “school day and academic calendar will be extended, resulting in 3.5 additional years of instruction (over 25% more) over the K-12 sequence,” R002702, and used its intent to increase the school year by twenty days as an illustrative feature highlighting Graystone’s program, R002704, which it stated would produce a “significantly positive impact.” R002726.

While Graystone operated on a 200-day school year for the 2003 – 2004, 2004 – 2005, and 2005 – 2006 school years, R000218; its 2007 – 2008 school year comprised 199 actual student days, R003068 – 003070, R000217 – 000218; its 2008 – 2009 school year comprised

178 actual student days, R003066 – 003067, R000216; its 2009 – 2010 school year comprised 175 actual student days, R003065, R000214 – 000215; and its 2010 – 2011 school year comprised 178 actual student days. R002106 – 002107, R003063 – 003064, R001610 – 001611. The reduction in the length of the school year came about not because Graystone’s students or parents requested a shorter school year, but because Graystone’s teachers complained and wanted to work fewer days. R000991 – 000993.

In 2008, Graystone advised the School District that Graystone intended to reduce the number of instructional days it provides to students from 200 to 181. R000991 – 000992, R004590. Although Graystone advised that it would do so “[s]ubject to the approval of the Coatesville Area School District,” R004590, there is no evidence that the School District ever approved Graystone’s request to amend its charter by reducing the number of instructional days or deviating from the 200-day school year promised in Graystone’s charter. R000993. Indeed, from December 2003 to November 2009, the School District never voted on any proposed amendments to Graystone’s charter which would have changed the number of instructional days promised in its charter application. R000208, R000220 – 000221. Therefore, CAB finds that Graystone violated its charter on this issue.

**v. Failure to provide Spanish instruction as described in the Charter.**

Graystone’s charter school application stated that the “Charter School program will treat foreign language as an integral part of the core curriculum, providing all instruction in the target language to simulate an environment of immersion. Spanish instruction will commence in kindergarten and build purposefully toward proficiency with each successive grade level.” R002709, R002770, R001149 – 001151. Rather than the program described, Graystone currently offers Spanish language instruction to all students, grades K through 8, only once every four

days for about 45 minutes. R001150, R001742. The definition of “immersion” means daily use of the language, R002120, and Graystone’s current curriculum does not meet that definition, nor is it effective, because it is not being used daily. R001151, R002121. Based on this uncontroverted evidence, Graystone does not have a Spanish language instruction program as described in its charter.

Graystone has not adhered to its promise to provide the Spanish instruction program described in its charter school application. R001151. Furthermore, Graystone did not seek approval of the School District to amend its charter by modifying this promised program. Therefore, Graystone violated its charter on this issue.

**vi. Failure to use the Iowa Assessment.**

Graystone’s charter school application stated that the School will administer the Iowa Test of Basic Skills (or other nationally-recognized assessment test) to all new students within 30 days of the beginning of the school year to establish a “base-line measurement” and then again within 30 days of the end of the school year to establish an “end-of-year measurement.” R002702. However, the uncontroverted evidence indicates that Graystone does not administer the Iowa Assessment. R001161 – 001162. There also is no evidence indicating that Graystone sought the approval of the School District to amend its charter so that it could drop the Iowa Assessment or substitute a different instrument which would serve the same function. Therefore, Graystone violated its charter on this issue.

**vii. Failure to provide periodic parent seminars and failure to do parental surveys.**

Graystone’s charter school application stated that the “school will provide seminars to educate parents in the academic content that their children experience, will offer evening

seminars for the community – parents, students, staff, and interested citizens – to experience what students learn, especially through the Paragon® Curriculum, and create a model to emphasize open communications between parents, staff, and students.” R002723. The charter school application also stated that parents would be informed of students’ progress through, among other things, annual parent satisfaction surveys. R002718, R002723.

With regard to parent satisfaction surveys, Graystone’s former principal and former acting CEO testified that while he held those positions, Graystone once gave parents the option of going to the School’s website to fill something out electronically, but other than that, surveys were not administered to parents. R002123. Additionally, during the School District’s comprehensive review of Graystone, the School District requested copies of parental satisfaction surveys but Graystone never provided any such surveys, or data showing the results of parent surveys. R001153. Similarly, during the comprehensive review, the School District requested documentation from Graystone supporting compliance with the promised parent seminars, including any meeting minutes and sign-in sheets, but as of the date of the hearings in this matter, Graystone had not provided documentation in response to that request. R001151 – 001152.

Based on this uncontroverted evidence, CAB concludes that Graystone does not provide periodic parent seminars or conduct annual parental surveys and Graystone did not seek the approval of the School District to amend its charter so that it could drop these promised items. Therefore, Graystone violated its charter on these two issues.

**viii. Failure to use the New Century computer program.**

Graystone’s charter school application stated that the School would use the New Century computer tutorial program, which would provide parents, teachers and students with

instantaneous information on a student's performance in basic skills and suggest instructional activities to overcome deficiencies in performance. R002702. Additionally, the charter application stated that the "exemplary diagnostic and prescriptive software from New Century" would enable custom tailoring of curricular materials to students' individual needs and promote proficiency in areas of weakness. R002719. But that software is not in use at Graystone. Moreover, Graystone's former principal and former acting CEO did not even know what the New Century computer software was. R001161, R001965 – 001966. He added that the computer program had been promised nine years previously, and that new technology tools are available now that were not available at that time. However, there is no evidence that Graystone sought approval from the School District to amend the charter by dropping the New Century computer program or replacing it with alternatives. Therefore, Graystone violated its charter on this issue.

**ix. Failure to assign teachers to the same students for three years ("looping").**

Graystone's charter school application stated that "[i]nstead of having a different teacher every year, students in Graystone Academy will progress through grades K-2 and 3-5 with the same teacher, a practice referred to as primary care teaching. Primary care teaching provides advantages for children, including a "personalized student-teacher relationship, longitudinal teacher accountability for student achievement, and open communications between parents and teachers." R002718. Additionally, Graystone's charter application stated that "[t]o enhance the family-school collaboration and to foster a stable environment conducive to social and academic mastery, Graystone will employ a Primary Care model in teaching K-5. One teacher serves as primary educator of a single class, moving with the children through the various grade levels." R002703.



The practice of primary care teaching is also referred to as “looping,” because teachers follow their students from grade to grade. R000085. However, at Graystone, for the most part, teachers stayed in the grades that they had been teaching in previous years. There were three classes which evolved into multiple grade levels in one class, *id.*, but the teachers did not “loop,” or follow their students from grade to grade. Instead, the students moved but the teachers stayed at the same grade level. R000085 – 000086, R001164 – 001165. There is no evidence that Graystone sought approval from the School District to amend the charter by using something other than primary care teaching/looping. Therefore, Graystone violated its charter on this issue.

**x. Failure to provide performance pay incentives for teachers.**

Graystone’s charter school application and informational pamphlet stated that the Graystone’s faculty will subscribe to a “performance pay plan,” by which compensation is linked to student performance. R002718, R004381. However, Graystone did not implement a performance pay plan for its teachers, and does not link teacher pay to student performance. R000091 – 000092, R001154 – 001155, R002123. Therefore, Graystone violated its charter on this issue.

**Materiality of items A(iii-x)**

As mentioned earlier, Graystone does not take issue with most of the pertinent facts in this case. Indeed, Graystone conceded in its Reply Brief in Support of the Appeal (“Reply Brief”) that it made changes to its curriculum, the length of its school year and its education program without asking permission from the School District. Reply Brief at 1 – 2. The question, in the face of these latter eight violations, becomes whether they are *material* violations of Graystone’s charter or not; it is their materiality which Graystone contests.

CAB, in *Thurgood Marshall Academy Charter School*, Docket No. CAB 2001-5, determined that having the same teachers for two consecutive years for students in grades three through six, or what is referred to in this case as “looping,” was one of several educational programs and activities identified in the charter school application which “intrinsicly became part of the charter” and the charter school “was legally bound and obligated to provide such educational programs and activities to its students.” *Id.* at 12. Other such promised educational programs and activities included a longer school year, and CAB also held that the length of the school year is clearly material to the educational program provided to students, especially when a charter school proposed to provide an extended school year for its students. *Thurgood Marshall Academy Charter School*, CAB 2001-5 at 13.

“Looping” and the length of the school calendar are just two examples out of these latter eight violations, but the principle applies equally to the remaining six violations. Graystone was legally bound and obligated to provide the promised educational programs and activities, and its failure to follow through by doing so constituted a material violation of its charter. *Thurgood Marshall Academy Charter School*, Docket No. CAB 2001-5 at 12. And while the failure to provide any of these things individually may not necessarily constitute a material violation of the charter, “in the aggregate, they do constitute a material violation of the charter because together they constitute a significant part of [the] charter school plan.” *Ronald H. Brown Charter School*, Docket No. CAB 2005-08 at 25; *RAPAH Charter School*, Docket No. CAB 2007-03 at 14. Therefore, Graystone’s failure to provide what was promised in its charter application – and its failure to seek approval from the School District to amend the charter by dropping them or replacing them with alternatives – amounts to a material violation of Graystone’s charter which justifies the revocation of its charter.

**B. FAILURE TO MEET THE REQUIREMENTS FOR STUDENT PERFORMANCE SET FORTH IN PDE'S REGULATIONS OR IN THE SCHOOL'S WRITTEN CHARTER**

- i. Failure to achieve the benchmark of 85% grade level proficiency for students attending Graystone for 5 years.**
- ii. Graystone student performance has declined and is well below that of the Coatesville Area School District.**

Although the School District separated the two above items in the Notice of Revocation, they are essentially the same claim because they are inextricably intertwined with Graystone's overall performance.

Graystone stated in its charter school application that its objectives included higher standardized test scores and steady improvement in the quality of performance-based assessments, R002702; that academic achievement would increase for all students in the areas of math, science, reading and social studies, R000680, R002702; and that its goal was that 85% of students who attend Graystone for five years will achieve grade-level proficiency, as measured by the state assessments in math, science, reading, and social studies. R002702.

For determining if schools met AYP proficiency standards in 2005 through 2007, the State established the following thresholds: Reading, 54% proficient or better; Math, 45% proficient or better. Similarly, for 2008, 2009, and 2010, the State established the following thresholds: Reading, 63% proficient or better; Math, 56% proficient or better. For 2011, the thresholds are: Reading, 72% proficient or better; Math, 67% proficient or better. And finally, for 2012, the thresholds are: Reading, 81% or better; Math, 78% or better. R000692, R003536 – 003537.

With regard to Graystone's PSSA proficiency levels in Math, its students in grades 3 – 8 tested as follows:

- a. In 2006 (the 2005 – 2006 school year), the AYP threshold was 45%, but only 31.5% of Graystone's students scored proficient or better, so Graystone did not make AYP. R000706, R003537, R003543.
- b. In 2007 (the 2006 – 2007 school year), the AYP threshold was 45%, and 55.5% of Graystone's students scored proficient or better, so Graystone made AYP. *Id.*
- c. In 2008 (the 2007 – 2008 school year), the AYP threshold was 56%, but 52.6% of Graystone's students scored proficient or better, so Graystone did not make AYP. R003537, R003543.
- d. In 2009 (the 2008 – 2009 school year), the AYP threshold was 56%, but 49.8% of Graystone's students scored proficient or better, so Graystone did not make AYP. R000706 – 000707, R003537, R003543.
- e. In 2010 (the 2009 – 2010 school year), the AYP threshold was 56%, but 44.6% of Graystone's students scored proficient or better, so Graystone did not make AYP. R000707, R003537, R003543.
- f. In 2011 (the 2010 – 2011 school year), the AYP threshold was 67%, but 55.3% of Graystone's students scored proficient or better, so Graystone did not make AYP. R0003537; Supplemental Exhibit 1, Tabs 1 and 2.
- g. In 2012 (the 2011 – 2012 school year), the AYP threshold was 78%, but 54% of Graystone's students scored proficient or better, so Graystone did not make AYP. R003537; Supplemental Exhibit 1, Tabs 3 and 4.

With regard to Math, then, these figures indicate that Graystone failed to make AYP for five consecutive school years (2007 – 2008 through 2011 – 2012) and has only made AYP in Math once - in 2006 – 2007.

Pertaining to Graystone's PSSA proficiency levels in Reading, its students in grades 3 – 8 tested as follows:

a. In 2006 (the 2005 – 2006 school year), the AYP threshold was 54%, but 33.8% of Graystone's students scored proficient or better, so Graystone did not made AYP. R000708 – 000709, R003536, R003544.

b. In 2007 (the 2006 – 2007 school year), the AYP threshold was 54%, and 58.6% of Graystone's students scored proficient or better, so Graystone made AYP. R000709, R003536, R003544.

c. In 2008 (the 2007 – 2008 school year), the AYP threshold was 63%, but 54.5% of Graystone's students scored proficient or better, so Graystone did not make AYP. *Id.*

d. In 2009 (the 2008 – 2009 school year), the AYP threshold was 63%, but 43.3% of Graystone's students scored proficient or better, so Graystone did not make AYP. *Id.*

e. In 2010 ( the 2009 – 2010 school year), the AYP threshold was 63%, but 41.6% of Graystone's students scored proficient or better, so Graystone did not make AYP. *Id.*

f. In 2011 (the 2010 – 2011 school year), the AYP threshold was 72%, but 43% of Graystone's students scored proficient or better, so Graystone did not make AYP. R0003536; Supplemental Exhibit 1, Tabs 1 and 2.

g. In 2012 (the 2011 – 2012 school year), the AYP threshold was 81%, but 46% of Graystone’s students scored proficient or better, so Graystone did not make AYP. R003536; Supplemental Exhibit 1, Tabs 3 and 4.

To summarize, Graystone failed to make AYP in Reading for five consecutive school years (2007 – 2008 through 2011 – 2012) and has made AYP in Reading just once, in school year 2006 – 2007.

Moreover, because Graystone failed to make AYP for the 2009 – 2010 school year, PDE placed it in Warning status. Supplemental Exhibit 1, Tab 2. Then, when Graystone failed to make AYP for 2010 – 2011 school year, PDE placed the School in School Improvement I status, Supplemental Exhibit 1, Tabs 2 and 4, and when Graystone failed to make AYP for the 2011 – 2012 school year, PDE placed it in School Improvement II status. Supplemental Exhibit 1, Tab 4. In contrast, Graystone argues that its student performance is improving, Graystone’s Brief at 32, Reply Brief at 9; however, these AYP results belie that assertion. More specifically, with regard to Graystone’s goal that “85% of students who attend the Charter School for five years will achieve grade-level proficiency as measured by the state assessments in math, science, reading, and social studies,” R002702, the PSSA data revealed that for Math, only 26.8% of the 41 students who had attended Graystone for five or more years tested at “proficient” and 19.5% of them tested at “advanced.” This means that 46.3%, fewer than 85% of them, tested at grade level proficiency for Math. R000689 – 000690, R003534. For Reading, 19.5% of the 41 students who had attended Graystone for five or more years tested at “proficient” and 12.2% tested at “advanced.” Therefore, 31.7%, again fewer than 85% of them, tested at grade level proficiency for Reading. R000690 – 000691, R003535. This evidence indicates that Graystone did not achieve its stated goal that “85% of students who attend the Charter School for five years will

achieve grade-level proficiency as measured by the state assessments in math, science, reading, and social studies.” R002702.

Graystone argued that its performance is improving. Graystone’s Brief at 32, Reply Brief at 9. However, while Graystone has made minor improvements in the number of students in the proficiency or above category in Reading since 2010 (from 41.6% in 2010 to 43% in 2011 to 46% in 2012), the number in the proficiency or above category in Math has declined (from 55.3% in 2011 to 54% in 2012). These facts, coupled with the facts that Graystone has gone from Warning status in 2010 to School Improvement I status in 2011 to School Improvement II status in 2012, defeat the argument that it is improving.

Graystone also argues that its performance is better than the performance of the Ronald H. Brown Charter School, Reply Brief at 10, the charter school which was the subject of *In Re: Ronald H. Brown Charter School*, Docket No. CAB 2005 – 08 at 25, *aff’d*, *Ronald H. Brown Charter School v. Harrisburg City School District*, 928 A.2d 1145 (2007), so that the appellate case is distinguishable from this one. In short, Graystone argues that the performance of the Ronald H. Brown Charter School was so abysmal that there is no comparison between that case and this one. However, while Graystone may be doing better, from a PSSA standpoint, than the Ronald H. Brown Charter School was doing in 2005, Graystone is, nonetheless, a school falling far short of the State’s standards. Therefore, Graystone’s attempt to distinguish this case from *Ronald H. Brown Charter School* is unsuccessful.

Additionally, citing *In Re: Sugar Valley Rural Charter School*, Docket No. CAB 2004-04, Graystone’s Brief at 33, Graystone argues, essentially, that a charter school’s goals are aspirational, not mandatory, so failure to meet them cannot serve as the basis for revoking a charter. Graystone’s Brief at 33. However, in *Sugar Valley*, the record did not

evidence that Sugar Valley has failed to meet the applicable student performance requirements established by the State Board of Education. . . It does evidence that the test scores have fallen and that, if they are not improved, Sugar Valley will most likely violate the standards. . .Until the standards are actually violated, test scores cannot be the basis of a finding that the act has been violated.

*Sugar Valley*, at 9. Therein lies the distinction that makes *Sugar Valley* inapplicable in this matter. In this case, not only have Graystone's test scores fallen over the past few years, but Graystone has only made AYP in Math and Reading once in the seven school years which have lapsed since the beginning of the 2005 – 2006 school year. In failing to make AYP, Graystone violated State standards.

Moreover, the Commonwealth Court in *Ronald H. Brown Charter School*, 928 A.2d 1145, stated that CAB can “reasonably rely on the PSSA results, the uniform test used statewide to measure performance,” in finding that a charter school has failed to meet its objectives, which “included higher standardized test scores and steady improvement in the quality of performance-based assessments.” *Id.* at 1153. That language is identical to the language in Graystone's charter application, which stated that Graystone's “objectives include higher standardized test scores, [and] steady improvement in the quality of performance-based assessments.” R002702.

Also, CAB previously has determined that a charter school's failure to make AYP in four out of five years of the school's charter is the equivalent of failing to meet minimum performance standards, making non-renewal of the school's charter appropriate. *Renaissance Charter School*, Docket No. CAB 2008 – 07 at 10. Coupling that determination with the Commonwealth Court's ruling in *Ronald H. Brown Charter School*, 928 A.2d at 1153, makes it entirely reasonable and logical to rely on the PSSA scores, which are the basis for determining AYP, as the basis for finding that State standards have been violated, and in determining that



Graystone “failed to meet its objectives that included higher standardized test scores and steady improvement in the quality of performance-based assessments.” *Id.*

Based upon the data summarized above, Graystone has not met the objectives stated in its charter application related to higher standardized test scores, steady improvement in the quality of performance-based assessments, increased academic achievement for all students in the areas of math and reading, and the percentage of students who attend Graystone for five years who achieve grade-level proficiency as measured by the state assessments in math and reading. The evidence supports the conclusion that Graystone has failed to meet its own benchmark performance standard, set forth in its written charter. Therefore, Graystone has committed a material violation of its charter.

**C. GENERALLY ACCEPTED STANDARDS OF FISCAL  
MANAGEMENT OR AUDIT REQUIREMENTS**

**i. Consistent failure to provide the District  
with accurate enrollment data.**

Graystone’s charter school application stated that Graystone will comply with state child accounting procedures and that it “will ensure through its Student Information System that enrollment figures and attendance will be reported accurately and in accordance with Pennsylvania Public School Code.” R002739.

In this case, Graystone does not dispute that it provided inaccurate enrollment and attendance information to the School District pertaining to the regular or special education status of four students, A.M., B.T., M.S. and J.T.<sup>10</sup>, at varying times over three school years. This occurred because Graystone identified these students as special education students, in the roster it provided to the School District and in its monthly billings. Thus, Graystone billed the School

---

<sup>10</sup>The students’ initials are used to protect their confidentiality.

District for the increased per pupil allotment for these students, during periods when the students were no longer actually classified as students with disabilities, resulting in overpayments to Graystone of over \$100,000.

The School District argues that the inaccurate information submitted by Graystone, which resulted in the overpayment, constitutes a consistent failure to provide the School District with accurate enrollment data that amounts to a violation of generally accepted standards of fiscal management or audit requirements. Although this is a violation, CAB does not find this to be a material violation of such standards.

**ii. Failure to obtain timely financial audits.**

Graystone's charter application stated that "[a]n annual school audit shall be conducted according to the requirements of Article 24 of the School Code of 1949. Charter School Board of trustees shall follow the requirement set forth for School Boards in this section." R002738. Additionally, in its charter school application, Graystone certified that it would "comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State." R002757.

PDE issues a Manual of Accounting and Financial Reporting for Pennsylvania Public Schools ("Manual"), which requires, among other things, that a charter school file an annual audit with PDE no later than December 31 after the fiscal year end if the charter school expends less than \$500,000 in federal funds. R002659 – 002660, R004583 – 004584, R004589. Graystone did not comply with this requirement with regard to its audits for fiscal years ending June 30, 2007 through 2010. R003425, R003451, R003455, R003481, R003484, R003510, R000528, R000621, R000624, R000627 – R000628, R000629, R0001689, R001787.

The audits for fiscal years ending June 30, 2007 through 2009 were dated May 2, 2008, October 17, 2009, and October 27, 2010, respectively. R003425, R003451, R003455, R003481, R003484, R003510. The audit for the fiscal year ending June 30, 2010, had not been filed by the day of hearing in this matter which occurred on July 7, 2011. R000528, R000621, R000624, R000627 – R000628, R000629, R0001689, R001787. Graystone refers to these respective delays of four months, nearly 10 months, 10 months, and more than seven months as “minor,” Reply Brief at 12, and has not provided any explanation as to why these audits were filed late.

The School District argues that the failure to file these audits on time evidences Graystone’s failure to comply with generally accepted standards of fiscal management, justifying revocation, while Graystone argues that the failure to timely file the audits caused no harm, so that it should not justify revocation. In making its argument, the School District cites *Renaissance Charter School*, Docket No. CAB 2008-07, in which CAB ruled that “failure to submit timely financial reports not only violates the written terms of the Charter, but also violates audit requirements,” and “[t]ermination of a charter is appropriate when the charter school has repeatedly failed to conduct and report independent financial audits, as required by the CSL.” *Id.* at 8. Graystone, however, argues that this case is distinguishable from *Renaissance Charter School* because there, the charter school had failed to have audit reports prepared for two or more years, far longer than Graystone’s delays, and was found to be experiencing financial instability, which Graystone is not.

The distinguishing features Graystone points out are valid ones. Indeed, in several other cases in which the failure to file timely audits was an issue, that failure was coupled with the charter school’s finances being in disarray, *see Thurgood Marshal Academy Charter School*, Docket No. CAB 2001-5 at 14; the school’s financial picture being insecure and uncertain, *see*

*Creative Educational Concepts Charter School*, Docket No. CAB 1999-15 at 13; the school's operating with a general fund deficit for a number of years, see *Ronald H. Brown Charter School*, Docket No. CAB 2005-08 at 20 – 21; or the school's operating at a deficit and defaulting on a loan. See *RAPAH Charter School*, Docket No. CAB 2007-03. The essence of Graystone's argument, then, is that the untimely filing of its financial audits, in the absence of evidence of financial mismanagement, is not sufficient basis for termination of its charter.

But that argument cannot succeed for several reasons. First, the reason for requiring the regular filing of financial audits by a charter school is to promote accountability and to enable the chartering school district, which has oversight of the charter schools it authorizes, to identify possible financial mismanagement before it becomes a serious problem, as the financial mismanagement did in *Renaissance Charter School* and the other cases cited above. The audit fulfills a statutory obligation, generates financial statements for a school, and requires the school to do a certain number of tests regarding its fiscal health and sustainability. R001417. To refuse to hold the charter school to the requirement of timely filed audits in the absence of evidence of financial mismanagement only encourages charter schools to file untimely audits in cases of *actual* financial mismanagement. Secondly, an untimely filed audit is unquestionably a violation of generally accepted standards of fiscal management and audit requirements and cannot be minimized in a case like this, where numerous other violations exist, without rejecting the intrinsic value of the audit to both the school and to the chartering district. Therefore, this violation was a material one and, particularly when aggregated with the other violations found above, justifies the termination of Graystone's charter.

## **CONCLUSION**

In summary, the evidence in the record weighs in support of significant grounds for termination of Graystone's charter. Graystone, as found and discussed above committed a number of material violations of its charter and, in short, was not true to its charter.

Additionally, Graystone made these changes to its promised program without seeking the approval of the School District. Therefore, Graystone's failure to provide the promised items, and its accompanying failure to seek approval from the School District for amending the charter by dropping them or replacing them with alternatives, constitute a material violation of Graystone's charter which justifies the revocation of its charter.

Sufficient grounds for termination also lie in the record evidence which demonstrates that Graystone failed to meet the requirements for student performance set forth in PDE's regulations, as well as Graystone's own performance benchmark and Graystone's failed to comply with generally accepted standards of fiscal management or audit requirements, in that it failed to file timely financial audits. Accordingly, CAB upholds the decision of the School District to revoke Graystone's charter.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
STATE CHARTER SCHOOL APPEAL BOARD

Graystone Academy Charter School,  
Petitioner

v.

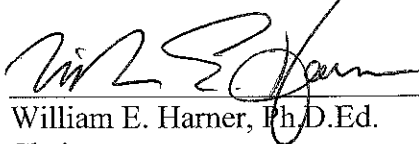
Coatesville Area School District  
Respondent

Docket No. CAB 2012-01

ORDER

AND NOW, this 2<sup>nd</sup> day of August, 2013, based upon the foregoing and the vote of this Board,<sup>1</sup> the appeal of the Graystone Academy Charter School is **DENIED**; and the Charter School is directed to dissolve as provided for in the Charter School Law.

For the State Charter School Appeal Board



William E. Harner, Ph.D.Ed.  
Chairman

*For Petitioner:* Brian H. Leinhauser, Esquire  
LAMB MCERLANE PC  
P.O. Box 565  
West Chester, PA 19381

*For Respondent:* Vincent L. Champion, Esquire  
James E. Ellison, Esquire  
Steven Moniak, Esquire  
RHOADS SINON LLP  
P.O. Box 1146  
Harrisburg, PA 17108-1146

*Date of mailing:* 8/5/13  
emailed 8/2/13

<sup>1</sup> At the Board's July 30, 2013 meeting the appeal of the Graystone Academy Charter School was denied by a vote of 6 to 0, with Members Harner, Lawrence, Magnotto, Marks, Munger and Yanyanin voting to deny the appeal. Board Member Barker was absent.